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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/668,065 | 09/23/2003 | Patrick Evan O'Rourke | | 3011 |

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EXAMINER

SMITH, TIMOTHY SCOTT

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/668,065 | Applicant(s) O'ROURKE, PATRICK EVAN | |
| | Examiner Timothy S. Smith | Art Unit 3632 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11-1-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action represents a Final Office Action for the application titled "SHOWER CADDY FASTENER," filed September 23, 2003.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19, 29, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 19, it is not clear if the applicant is attempting to recite the *subcombination* of a device, or the *combination* of the device *and* a shower caddy having a shaft. The preamble of claim 1 states the former (note "A device comprising"), but then a shaft is positively recited in claim 19 ("...wherein the shaft of an arch or the shaft of a rod fits within said groove such that the shaft is attached to the fastener assembly"). The applicant must make it clear if the shaft is intended to be *functionally* or *positively* recited. For instance, modifying claim 19 to read –wherein the groove of said fastener assembly is capable of receiving a shaft of an arch or a shaft of a rod– would recite the shaft merely functionally, and the Examiner will assume this is so for the purposes of this office action.

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3. Claims 29 and 30 recite the limitation "said ledge." There is insufficient antecedent basis for this limitation in the claim. It is suggested that applicant rewrite claims 29 and 30 so that they depend from claim 21.

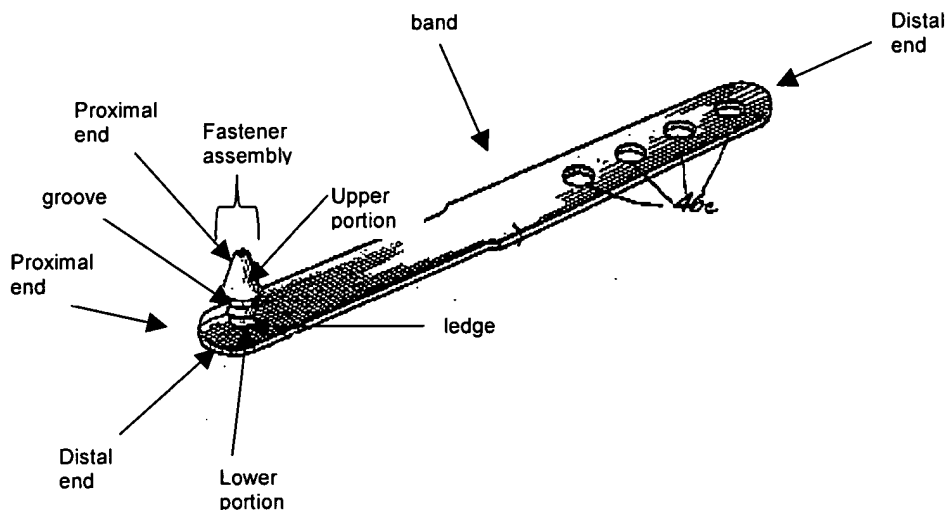
Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 16-18, and 20-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,169,004 to Rapata.



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Rapata discloses a device comprising, in combination: a band (above) extending along an axis, said band having a proximal end (above), distal end (above), upper surface and lower surface, a fastener assembly (above) having an upper portion (above) and lower portion (above), said lower portion of said fastener assembly attached to said proximal end of said band, said upper portion of said fastener assembly having a groove (above) extending along said axis, wherein said band is capable of wrapping around a shaft having said distal end of said band removeably engaging said fastener assembly, wherein said groove snap engages an arch (groove snap engages with an arch of aperture 46c), wherein said fastener assembly is further defined as having a proximal end (above) and distal end (above), wherein said fastener assembly is further defined as comprising a ledge (above) attached to said distal end of said fastener assembly, wherein said distal end of said band is further defined as comprising an aperture (46c) having a proximal and distal edge, wherein said ledge is positioned above the upper surface of said band at a distance which permits said distal edge of said aperture in said distal end of said band, to fit between said ledge and said upper surface of said band, wherein said aperture in said distal end of said band fits over and around said fastener assembly, wherein said distal end of said band is further secured in place to said fastener assembly by said ledge, wherein said band is further defined as being formed from a no-slip material that is flexible and elastic (column 2, lines 25-28), wherein said elastic properties of said band permit said aperture in said distal end of said band to stretch over said ledge and contract around said lower portion of said

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fastener assembly, wherein said aperture in said distal end of said band is sized to fit closely and securely around said lower portion of said fastener assembly.

Allowable Subject Matter

6. Claim 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Applicant's Amendments

7. Applicant's arguments with respect to claims 16-30 have been considered but are moot in view of the new ground(s) of rejection.

Changes to the abstract, specification, and drawings have been acknowledged and accepted.

Applicant's submission of an Information Disclosure Statement has been considered.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Smith whose telephone number is 571-272-8296. The examiner can normally be reached on M-F: 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

TSS

Timothy S. Smith
Patent Examiner
Art Unit 3632
January 17, 2006

 1/19/06

ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600